IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 167 of 1999()

CC.107/1996 of MUNSIFF-MAGISTRATE COURT, DEVICULAM

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APPELLANT / PETITIONER/ COMPLAINANT

P.N.BHASKARAN NAIR, S/O. NARAYANAN NAIR,
PERINGATTU PUTHENPURAYIL HOUSE,
VENGOLA P.O., THODUPUZHA NOW
WORKING AS JUNIOR SUPERINTENDENT,
TALUK OFFICE, KASARAGOD.

BY ADV. SRI.T.S.RADHAKRISHNA PILLAI

RESPONDENTS/ RESPONDENTS/ ACCUSED & STATE OF KERALA

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1. **K.KRISHNANKUTTY, S/O.KRISHNAN,**
   DEPUTY TAHSILDAR (HOUSING) TALUK
   SUPPLY OFFICE, DEVIKOLAM.

2. **STATE OF KERALA, REP.BY THE PUBLIC PROSECUTOR,**
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR K.M.FIROZ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No.167 of 1999

Dated this the 14th day of February, 2007

Judgment

This appeal is filed against the order of acquittal. Notice was ordered on 8.3.1999, but, no effective steps were taken to serve notice on the accused. On 18.10.2006, this court granted a week's time to cure the defect and for taking fresh steps as last chance. So far, no steps were taken. Without service of notice and hearing the accused, an order of acquittal cannot be reversed. Therefore, non-taking of effective steps for serving notice on the accused is itself a ground for dismissing the appeal. However, since this is a criminal appeal, I have also gone through the merits of the case. Case of the complainant was that accused has issued cheque for Rs.1,25,000/- to him to discharge an existing liability and the cheque was presented before the bank for collection, but, it was dishonoured for insufficiency of funds. Therefore, he approached the Magistrate's court after completing the statutory formalities. Accused denied the transaction. The complainant who was examined as PW3 was not able to prove before the court when and how the liability occurred. According to him, he paid the amount to the accused by withdrawing the said amount from the

District Co-operative Bank Limited, Kumaramangalam Branch. PW1 on behalf of the District Co-operative Bank Limited gave evidence that there is no branch at Kumaramangalam. DW1 is one of the directors of the District Co-operative Bank Limited. Ext.D1 is the list of branches of the District Co-operative Bank Limited. Therefore, trial court found that the version of the complainant that he took Rs.1,25,000/- from the Kumaramangalam branch of the District Co-operative Bank Limited and gave the same to the accused is unbelievable. According to the accused, no amount was due by him to the complainant. According to him, Ext.P1 blank cheque was issued to the complainant on the understanding that the complainant will take necessary steps for the reinstatement of the accused who was under suspension at that time. It is admitted by the complainant also that accused was under suspension during the relevant period. The trial court found from the evidence available that it is possible and, in any event, it is not proved that Ext.P1 cheque was issued for a legally enforceable liability and the case of the accused is more probable and presumption under section 139 is rebutted.

In this connection, I also refer to the decision of the Apex Court in M.S.Narayanan Menon @ Mani v. State of Kerala (2006 (3) KLT 404). On going through the evidence as well as the findings, it cannot be stated that the view

of the trial court is not a possible one. I agree with the findings of the trial court. Therefore, there is no merit in the appeal and the appeal is dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl.A. No. 167 of 1999

Judgment

14-2-2007